

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2015-61-T - ORDER NO. 2015-235

APRIL 3, 2015

IN RE: Application of Ballantyne & Beyond) ORDER GRANTING
Moving, Inc. for Transfer of Class E) EXPEDITED REVIEW,
(Household Goods) Certificate of Public) APPROVING
Convenience and Necessity No. 9784 from) APPLICATION NUNC
Kenneth James Scallions d/b/a Ballantyne &) PRO TUNC, AND
Beyond Moving to Ballantyne & Beyond) APPROVING REVISED
Moving, Inc.) RATES

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Application of Ballantyne & Beyond Moving, Inc. (“the Applicant” or “the Company”) for approval of a transfer of Class E (Household Goods) Certificate of Public Convenience and Necessity No. 9784 (“Certificate”) from Kenneth James Scallions d/b/a Ballantyne & Beyond Moving to Ballantyne & Beyond Moving, Inc. The Applicant has requested expedited review, approval of the Application *nunc pro tunc*, and approval of revised rates. Pursuant to 10 S.C. Code Ann. Regs. 103-817(C)(3)(a), the Applicant published notice of this matter in newspapers of general circulation. No protests or Petitions to Intervene were filed. Also, the Office of Regulatory Staff (“ORS”) does not object to the Application. Accordingly, we grant expedited review of the matter.

10 S.C. Code Ann. Regs. 103-135(3)(a) requires that the Applicant for a transfer of a certificate file a copy of the proposed transfer agreement with this Commission. Although the agreement contained in the Application does not contain the agreed

purchase price as required by the regulation, we will accept the filing of the agreement and waive the lack of a purchase price. 10 S.C. Code Ann. Regs. 103-135(3)(b) states that no transfer of a certificate may take place without the filing of a statement under oath with the Commission showing assets to be sold, any debts of or claims against the present owner, and other information about the original owner of the certificate. The proper statement was filed with the Commission by the Company.

10 S.C. Code Ann. Regs. 103-135 (4) states that the Commission shall approve an Application for transfer of a certificate upon finding (1) that the sale will not adversely affect the service to the public under the certificate; (2) that the person acquiring said certificate or control thereof is fit, willing, and able to perform such service to the public under said certificate, and (3) that all services under said certificate have been continuously offered and reasonably provided to the public for a period of not less than twelve months prior to the date of filing of the Application for approval of the sale or transfer. We have examined the entire record in the present case and believe that the three criteria for approval of the transfer have been met.

First, we believe that the transfer will not adversely affect the service to the public under the Certificate. In this case, the record shows that the status quo is maintained under the Certificate, in that the established business will continue to operate if the transfer is approved. No protests or Petitions to Intervene resulted upon publication of notice of the proposed transfer in newspapers of general circulation. No evidence of resulting adverse effects on the public upon transfer was presented by ORS. We therefore

hold that, based upon the record before us, no adverse effects will occur on the service to the public because of the transfer of the Certificate.

Second, the record reflects that the company acquiring the Certificate is fit, willing, and able to perform service to the public under the Certificate. Exhibit FWA of the Application shows that the Applicant has certified that it is familiar with all statutes and regulations, including safety regulations, in South Carolina pertaining to operation under the Certificate, and that it agrees to operate in compliance with these regulations. The Applicant has also provided a list of equipment that would be used to provide service under the Certificate, along with an insurance certificate. The Applicant has also certified that there are no outstanding judgments against it, and has also filed a Safety Certification. Accordingly, we hold that the Applicant meets the fit, willing, and able criteria outlined in 10 S.C. Code Ann. Regs. 103-133(1) (a) (b) and (c), and therefore also meets the second criteria for approval of a transfer of a certificate under 10 S.C. Code Ann. Regs. 103-135(4).

Third, services under the certificate proposed for transfer must have been continuously offered and reasonably provided to the public for a period of not less than twelve months prior to the filing of the Application for transfer. The Applicant has attached sufficient Bills of Lading to the Application to show that service was being continually provided to the public under the Certificate for twelve months prior to the filing of the Application for transfer. Therefore, the third criterion under 10 S.C. Code Ann. Regs. 103-135(4) has been satisfied.

The Applicant requests approval of the transfer of assets *nunc pro tunc*. The transaction was actually closed on November 10, 2014, but Mr. Scallions was out of the country for extended periods during this time, causing a delay in obtaining his signature on the required documents. ORS does not object to *nunc pro tunc* approval.

Further, the Applicant requests approval of revised rates along with the transfer. ORS provided an Impact Study, which revealed, among other things, that ORS had not received any complaints in the last twelve months regarding the Applicant, and that the Applicant was in compliance with both Annual Report and Gross Receipts filing requirements. ORS did find that the Applicant was utilizing unapproved rates, however, the Applicant has now asked for approval of those rates. We have examined those rates, and they are reasonable. We will therefore approve the new rates as filed, but admonish the Applicant that it must hereafter file for approval of rates prior to changes.

The record leads us to hold that the transfer should be approved as filed, *nunc pro tunc*, as well as the revised rates.

IT IS THEREFORE ORDERED THAT:

1. The Application of Ballentyne & Beyond Moving, Inc. for transfer of Class E (Household Goods) Certificate of Public Convenience and Necessity No. 9784 is approved *nunc pro tunc* as filed, as are the revised rates. If it has not already done so, the Company must file with the Commission its amended tariff within ten (10) days of its receipt of this Order, reflecting the approved revised rates.

2. The Applicant shall file with the Office of Regulatory Staff the proper insurance, safety rating, and other information required by S.C. Code Ann. Section 58-

23-10 et. seq. (1976), as amended, and by 10 S.C. Code Ann. Regs. 103-100 through 103-241 of the Commission's Rules and Regulations for Motor Carriers, as amended, and 2 S.C. Code Ann. Regs. 38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, as amended, within ninety (90) days of the date of this Order, or within such additional time as may be authorized by the Commission.

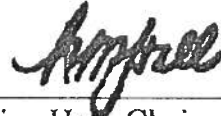
3. Upon compliance with S.C. Code Ann. Section 58-23-10 et. seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann. Regs. Vol. 10 (1976), as amended, the transfer of the Certificate shall be noted by the Office of Regulatory Staff authorizing the motor carrier services by the Applicant granted herein.

4. Failure of the Applicant to either (1) complete the certification process by complying with the Office of Regulatory Staff requirements of causing to be filed with the Commission proof of appropriate insurance and an acceptable safety rating within ninety (90) days of the date of this Order or (2) to request and obtain from the Commission additional time to comply with the requirements stated above, this Order granting the Application shall be deemed null and void and the Application herein shall be dismissed without prejudice. In this event, no further order of this Commission is necessary.

5. Pursuant to the two month reporting requirement contained in Order No. 2014-443 (May 21, 2014), the ORS is requested to furnish the name and docket numbers of the Applicant to the Commission, should the Applicant fail to meet the requirements of the present Order. After such notification, the Docket shall be closed.

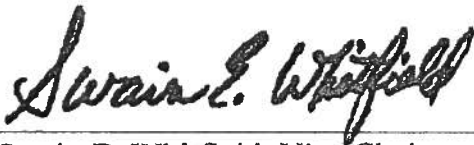
6. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



Nikiya Hall, Chairman

ATTEST:



Swain E. Whitfield, Vice Chairman

(SEAL)